

**REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Office action dated June 6, 2006 are respectfully requested. Applicants petition the Commissioner for a 1-month extension of time. A separate petition accompanies this amendment.

**I. Amendments**

Claim 1 is amended recite that the at least one antenna exhibits at least one radius of curvature from a longitudinal axis of the introducer. Claim 20 is amended to recite advancing the at least one antenna into the selected tissue mass with at least one radius of curvature from a longitudinal axis of the introducer. Basis for these amendments can be found, for example, in Fig. 1.

No new matter is added by way of these amendments.

**II. Rejection under 35 U.S.C. §102**

Claims 1-3, 7-9, 11, 12, 15, 18-24, 32, 36, and 37 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Edwards *et al.* (U.S. Patent No. 5,370,675).

**A. The Present Claims**

Claim 1, as amended, includes at least one antenna positioned in the introducer as the introducer is introduced through tissue and exhibiting at least one radius of curvature from the longitudinal axis of the introducer when deployed from the introducer at a selected tissue mass.

Claim 20, as amended, includes a step of advancing at least one antenna distal end out of the introducer lumen and into the selected tissue mass with at least one radius of curvature from the longitudinal axis of the introducer.

**B. The Prior Art**

EDWARDS ET AL. relate to a medical probe device for treatment of the hyperplastic tissues of the prostate to treat benign prostatic hyperplasia. The probe comprises a catheter having a stylet guide housing for directing a flexible stylet out of the catheter and into the tissue. The catheter is advanced through ducts adjacent to the desired

treatment area. The stylet is advanced out of the catheter to penetrate the urethral wall and the prostate.

C. Analysis

According to M.P.E.P. § 2131, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference".

Edwards et al., the '675 patent, fail to teach an apparatus or method including at least one antenna exhibiting at least one radius of curvature from the longitudinal axis of the introducer.

As best seen in figure 4, the stylet of the '675 patent is deployed from the catheter at an angle determined by the stylet housing. The stylet of the '675 patent has no curvature upon deployment. Furthermore, the stylet of the '675 patent is deployed from the catheter at an angle determined by the stylet housing and does not alter direction from the angle determined by the stylet housing as the stylet is advanced from the catheter.

Accordingly, Applicants submit that standard of strict identity to maintain a rejection under 35 U.S.C. § 102 has not been met. Withdrawal of the rejections under 35 U.S.C. § 102(b) is respectfully requested.

III. Rejections under 35 U.S.C. §103

Claims 1-3, 7-9, 11, 12, 15, 18-24, and 30-37 were rejected under 35 U.S.C. §103 as allegedly obvious over LeVeen *et al.* (U.S. Patent No. 5,827,276) in view of Edwards *et al.* (the '675 patent).

Claim 34 was rejected under 35 U.S.C. §103 as allegedly obvious over LeVeen *et al.* and Edwards *et al.* (the '675 patent), and further in view of Edwards *et al.* (U.S. Patent No. 5,507,743, the '743 patent).

A. The Present Claims are described above.

B. The Cited References

LEVEEN ET AL. disclose a volumetric ablation apparatus comprising a probe having a plurality of wires deployable from a catheter.

EDWARDS ET AL., THE '675 PATENT is described above.

EDWARDS ET AL., THE '743 PATENT describes a RF treatment apparatus for multi-modality treatment for tumors.

C. Analysis

According to the M.P.E.P. § 2143, "to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art references (or references when combined) must teach or suggest all the claim limitations."

1. Rejection of claims 1-3, 7-9, 11, 12, 15, 18-24, and 30-37

The combination of references fails to show or suggest the claimed device and method as a whole. When prior art references require selective combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight obtained from the invention itself. It is critical to understand the particular results achieved by the new combination. *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985).

The presently claimed apparatus includes an introducer; at least one antenna that is deployable from the introducer with at least one radius of curvature from the longitudinal axis of the introducer; and at least one thermal sensor coupled to at least one of the introducer or at least one antenna. The at least one antenna is operatively coupled to a microwave source.

One skilled in the art could not simply substitute the energy source of the '675 patent for the RF source of the LeVeen et al. patent as neither patent provides any guidance for such a modification. One skilled in the art would appreciate that the systems of LeVeen et al. and the '675 patent are very dissimilar and would not substitute the teachings without some guidance to do so. The system of LeVeen et al. provides volumetric ablation of tissue around the probe with an RF array that is deployed from and around the probe end. In contrast, the '675 patent deploys a stylet

from the distal end of a stylet housing to ablate prostate tissue located apart from the stylet housing. LeVeen et al. fail to disclose a device or method using either of sensors or an energy source alternative to microwave. Edwards et al. fail to disclose a device or method having at least one antenna exhibiting at least one radius of curvature from the introducer longitudinal axis.

A person confronted with the LeVeen et al. reference and '675 patent would not select from the '675 patent the sole feature of a microwave energy source. Rather, the device of the '675 patent also requires a stylet guide housing to prevent damage to the urethra and a flexible catheter to navigate the urethra. Nor would one modify the device of the '675 device to include stylets with at least one radius of curvature. A requirement of the '675 device is minimizing damage to the urethra. A curved stylet would bend away from the prostate and ablate a larger portion of tissue than the straight stylet currently depicted.

## 2. Rejection of claim 34

Claim 34 requires that the introducer is coupled to a RF energy source. The '743 patent is cited as "the outer electrode may delivery microwave energy to heat peripheral tissue while RF energy is delivered to the inner electrode to ablate tumor tissue" (Office action mailed June 6, 2006, page 4). This has no bearing on the present claim where the introducer is coupled to a RF energy source. As described in the '743 patent, the active electrode and indifferent electrode are coupled to an RF power source (Col. 5, lines 18-19). However, nowhere does the '743 patent disclose that the introducing catheter (22) is coupled to an RF energy source.

As the references, alone or in combination, fail to teach or suggest all the claim limitations, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. § 103.

## IV. Obviousness-Type Double Patenting Rejection

Claims 1-3, 7-9, 11, 12, 15, 18-24, and 30-37 were rejected under the judicially created doctrine of obviousness-type double patenting as being directed to an invention not patentably distinct from the claims of co-owned U.S. Patent Nos. 5,672,173;

5,672,174; 5,728,143; 5,913,855; 5,928,229; 5,951,547; 5,980,517; 6,080,150; 6,132,425; 6,689,127; 6,958,062; 5,735,847; 5,782,827; and 5,863,290.

A Terminal Disclaimer prepared in accordance with 37 C.F.R. §1.321(b) and (c) will follow under separate cover. The signed Terminal Disclaimer will obviate the above obviousness-type double patenting rejections.

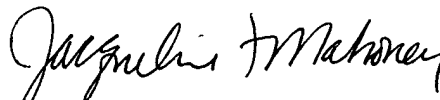
Claims 1-3, 7-9, 11, 12, 15, 18-24, and 30-37 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being directed to an invention not patentably distinct from the claims of co-owned U.S. Application No. 11/016,384 in view of the teaching of LeVeen *et al.* Applicants respectfully request this rejection be held in abeyance until such time as allowable claims are found in this or the '384 application.

### **CONCLUSION**

In view of the foregoing, Applicants submit that the claims pending in the application are in condition for allowance. A Notice of Allowance is therefore respectfully requested.

The Examiner is invited to contact Applicants' representative at (650) 838-4410 if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,



Jacqueline F. Mahoney  
Registration No. 48,390

Date: Oct. 6, 2006

### **Correspondence Address:**

Customer No. 22918  
(650) 838-4300